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December 21, 2002

Date

Mark Bourgeois

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Signature

12/20/2002

Date of Signature

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In RE:

Serial no.: 09/944,932  
Filing date: 08/31/2001  
For: Euphorbia Plant named 'Charam'  
Inventor: Tickner  
Atty. Docket no.: PH39  
Group Art Unit: 1661  
Examiner: Para

Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**RESPONSE**

Dear Sir:

This is in response to the Office Action dated 11/05/2002. No additional fees are believed to be necessary.

**Rejection under 35 U.S.C. 102b:**

The claim was rejected under 35 USC 102b as being anticipated by Plant Breeders Right grant number 03000204 in view of 'Charam' being sold in the United Kingdom.

The combination of a non-enabling printed publication with foreign commercial use is not a bar to patentability under 35 U.S.C. 102(b) for plant patents. Every element of a new plant variety can not be disclosed in a printed publication. A non-enabling publication fails as a reference under 102(b). The cited printed publication does not contain every material element of the claimed invention.

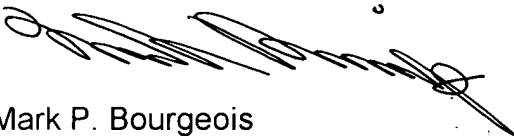
Further, foreign public or commercial activity fails as a barring activity under 102(b). Combining these two "non-references" to make a rejection under 102(b) is not proper.

In order to properly reject the claim under 35 U.S.C. 102(b), every element of the claimed invention must be found in a single reference, as required under *LeGrice*. In the present case, the cited Plant Breeder's Rights certificate was taken in combination with the sale in the United Kingdom as being sufficient to bar patentability. Therefore, the reference was not a single reference and rejection under 102(b) is improper.

It is respectfully requested that the 102b rejection be withdrawn.

The claimed plant is now believed to be in condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark P. Bourgeois', with a stylized flourish at the end.

Mark P. Bourgeois  
Reg. No. 37,782